

**IN THE COURT OF APPEALS  
FIRST APPELLATE DISTRICT OF OHIO  
HAMILTON COUNTY, OHIO**

STATE OF OHIO,	:	APPEAL NO. C-100726
	:	TRIAL NO. B-0903805
Plaintiff-Appellee,	:	
	:	<i>JUDGMENT ENTRY.</i>
vs.	:	
RAMONE HAYDEN,	:	
Defendant-Appellant.	:	

We consider this appeal on the accelerated calendar, and this judgment entry is not an opinion of the court. See S.Ct.R.Rep.Op. 3(A); App.R. 11.1(E); Loc.R. 11.1.1.

Defendant-appellant Ramone Hayden was a passenger in a vehicle that was stopped by Cincinnati police officers when the driver committed a traffic infraction. When Hayden exited from the vehicle, a small amount of marijuana was found near where he had been seated. During a pat-down search, officers noticed that Hayden appeared to be attempting to hide something between the cheeks of his buttocks. Hayden was arrested for possessing marijuana and transported to the Hamilton County Justice Center. A subsequent search revealed that Hayden had been hiding a package of heroin.

The trial court denied Hayden's motion to suppress, in which Hayden had argued that the pat-down in the street had been unnecessarily intrusive and that there had been no probable cause to arrest him prior to the search at the Justice Center. The matter proceeded to a bench trial, and Hayden was convicted and sentenced accordingly.

On appeal, Hayden argues that he was not properly arrested because the state failed to show that the marijuana arrest occurred in the city of Cincinnati—the only

local jurisdiction which allows for an arrest for possessing a small amount of marijuana. But this argument was not presented below.

Such arguments may not be made for the first time on appeal. *State v. Carter* (Nov. 5, 1999), 1st Dist. Nos. C-980942, C-980943, and C-980944. In *Carter*, the presentation of evidence had been limited to certain issues that were in dispute, and then, in closing argument, counsel had asked that the motion be granted on grounds that had not been the subject of any of the evidence presented. We held that “Carter’s failure to raise the lack-of-arrest issue in his motion to suppress constituted a waiver of that issue.” See, also, *State v. Lattimore*, 1st Dist. No. C-100675, 2010-Ohio-2863, at ¶6 (“Lattimore also argues that even if the traffic stop was legal, the subsequent search of his vehicle was an impermissible search incident to arrest. But because he did not raise this issue before the trial court, he has waived it on appeal.”) Other courts have held that the failure to make an argument below, at a time when evidence on the matter could have been presented, precludes the issue from being raised on appeal. See, e.g., *State v. Corbin*, 12th Dist. No. CA2010-01-001, 2010-Ohio-3819, ¶13; *State v. Parsley*, 10th Dist. No. 09AP-612, 2010-Ohio-1689, ¶18.

Hayden did not raise below the issue that his marijuana arrest was improper because it had occurred outside the city of Cincinnati. Therefore, the state was not put on notice and was not given the opportunity to place such evidence in the record. Therefore, we reject Hayden’s sole assignment of error and affirm the judgment of the trial court.

A certified copy of this judgment entry is the mandate, which shall be sent to the trial court under App.R. 27. Costs shall be taxed under App.R. 24.

**DINKELACKER, P.J., SUNDERMANN and FISCHER, JJ.**

To the Clerk:

Enter upon the Journal of the Court on November 23, 2011

per order of the Court \_\_\_\_\_.

Presiding Judge